IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.7l9 of 2005

Shri Kailash Ishwarlal Matchhar..Petitioner
vs
Mr Manmohan Roay Ishwarlal
Matchhar & Ors..respondents

Mr.V.S.Kapse for petitioner
Mr.B.P.Israni for respondents

CORAM: A.P.SHAH J.
Dated 2l.l0.2005

P.C:

. Rule. Learned counsel appearing for the respondents waives service. By consent, rule is made returnable forthwith.

. This petition under Article 227 takes exception to the order passed by the appellate bench of the Small Causes Court rejecting the interim notice taken out by the petitioner for condonation of delay in filing the appeal. The petitioner is the original plaintiff who filed a declaratory suit in the Small Causes Court. The suit came to be dismissed on 3l.l0.2002. According to the petitioner his family is residing at Jalgaon and he went to Jalgaon on l4.ll.2002 and returned to Mumbai only on 28.l2.2002. He contacted his advocate on 30.l2.2002. In the meanwhile the

advocate applied for certified copy of the judgement and decree on l6.l2.2002 and same was received on 28.l2.2002.

. According to the petitioner he is a senior citizen and old man aged about 69 years and except the suit premises he has no other residential accommodation in Mumbai. He was not keeping good health and was adviced to take rest by the doctor from 7.l.2003 to l0.2.2003 and, therefore, he could not file the appeal within time. The petitioner therefore prayed for condonation of delay of 44 days in filing the appeal. The interim notice taken out by the petitioner was dismissed by the appellate bench on the ground that the medical certificate produced by the petitioner does not show that the petitioner was adviced bed rest and thus no sufficient cause was shown for condonation of delay.

. I have heard the learned counsel for the parties. I have also perused copy of the medical certificate annexed to the petition which shows that the petitioner was adviced bed rest for the period 7.l.2003 to l0.2.2003. It is well settled that the court should not adopt unduly rigid or overstrict view in construing whether sufficient

cause has been established or not when the facts stated in the application for condonation of delay are found to be correct it would not be appropriate to refuse the prayer for condonation of delay. The Apex Court has time and again stressed that 'sufficient cause' should receive liberal construction so as to advance substantial justice when no negligence, nor inaction nor want of bonafide is imputable to the appellant. If sufficient cause is shown, the court has to exercise its discretion in favour of the appellant. The true guide for the court in exercise of the discretion is whether the appellant has acted with reasonable diligence in prosecuting his appeal or application. In my view therefore the order of the lower court cannot be sustained and same is hereby quashed and set aside. The Interim Notice taken out by the petitioner stands granted. The lower court is directed to decide the appeal expeditiously. Rule is made absolute accordingly with no order as to costs.